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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ROBERT REGINALD COMENOUT SR.
12 and EDWARD AMOS COMENOUT III,

13 Plaintiffs,

14 v.

15 ERIC BELIN, AL ANDERSON,
16 KANDRA TINNERSET, and PAUL
17 JOHNSON,

18 Defendants.

CASE NO. 3:16-cv-05464-RJB

ORDER ON DEFENDANT ERIC
BELIN'S MOTION FOR
SUMMARY JUDGMENT

19 THIS MATTER comes before the Court on Defendant Eric Belin's Motion for Summary
20 Judgment. Dkt. 115. The Court has considered the pleadings filed in support of and in opposition
21 to the motion and the file herein.

22 **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

23 **A. FACTS.**

24 The following facts are substantiated by the record and written in the light most favorable
to Plaintiffs. Where Plaintiffs have not contested facts provided by Defendant Belin, those facts
are construed as true for the purposes of this motion.

1 1. *Billboard on the Allotment.*

2 The Fourth Amended Complaint names Defendant Belin in his official capacity as a City
3 of Puyallup employee who “trespassed on Plaintiffs’ property and posted stop [work] orders
4 causing Plaintiffs to stop construction” of a commercial sign (“the billboard”). Dkt. 79 at ¶19.
5 According to Plaintiff Robert Comenout Jr., on an unidentified date in 2006, he “was present”
6 when two City of Puyallup employees visited the real property central to the claims in this case
7 (“the Allotment”). Dkt. 120. Plaintiff Robert Comenout Jr. represents that the two employees
8 “tried to stop the Indian Country billboard sign from being built.” *Id.* at ¶2. He recalls hearing
9 Edward Comenout Jr. tell the two employees “words to the effect that the City of Puyallup had
10 no authority to stop [Edward] from building the sign.” *Id.* at ¶5. The two employees “served the
11 employee of the sign building contractor with some kind of stop order . . . [that is] still attached
12 to the sign.” *Id.* at ¶6.

13 Defendant Belin recalls visiting the Allotment once on October 24, 2006 with Cynthia
14 Kiersey, Code Enforcement Officer, for the purpose identifying the billboard contractor. Dkt.
15 118 at ¶¶10, 13(a). Defendant Belin maintains that he “never at any time took any enforcement
16 action against Plaintiffs over or involving the billboard[,]” and had no involvement in drafting,
17 reviewing, approving, or issuing a stop work order. *Id.* at ¶¶11, 13(b).

18 The City of Puyallup issued a stop work order on or about the 26th or 27th of October,
19 2006. *See* Dkt. 116-1 at 55-66.

20 2. *Notice of Violation and Stop Work Order, and 2007 litigation.*

21 The City of Puyallup’s stop work order was the subject of prior litigation assigned to this
22 Court and commenced on April 17, 2007 (“the 2007 litigation”). *See* Dkt. 116-1 at 55-66
23 (*Edward Comenout Jr. v. City of Puyallup*, Cause No. 3:07-cv-05182-RJB, Dkt. 1). The initial
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1 plaintiff in the 2007 litigation, Edward Comenout Jr., attached to the Complaint a copy of an
2 October 27, 2006 Notice of Civil Violations and Stop Work Order. *Id.* at 60-66. Sent in letter
3 format by the City Attorney to Edward Comenout Jr., the notice and order was issued
4 “[p]ursuant to IBC [International Building Code] section 114:1,” which gives the “City’s
5 Building Official [] the authority to issue” the civil infraction. *Id.* at 64. The document allowed
6 for written appeal of the infraction to the “Code Compliance Hearing Examiner.” *Id.* at 65. The
7 document describes violations based on observations by the City of Puyallup on two dates:
8 October 19, 2006, by Cynthia Keirse, Code Enforcement Officer, and Reilly Pittman, Assistant
9 Planner; and October 24, 2006, by Ms. Keirse, Code Enforcement Officer, and Defendant
10 Belin, Senior Building Inspector. *Id.* at 60, 61.

11 This Court dismissed the 2007 litigation without prejudice after the plaintiffs failed to
12 explain why all parties with interests in the Allotment had not been joined. Dkt. 116-2 at 87, 88.

13 *3. Defendant Belin as an employee of City of Puyallup.*

14 Defendant Belin is currently a Senior Plans Examiner for the City of Puyallup, a position
15 held since January 1, 2008. Dkt. 123 at ¶2. Prior to 2008, including during 2006, Defendant
16 Belin held the position of Senior Building Inspector. *Id.* at ¶7. He has never had the authority to
17 issue, revoke, or take action on building permits. Dkt. 118 at ¶5. He has never held the position
18 of Code Enforcement Officer or City Building Official, and he does not act as a speaking agent
19 for the City of Puyallup or possess authority to make its policy. *Id.* at ¶¶5, 6.

20 Defendant Belin is not, and has never been, employed by the City of Puyallup Police
21 Department. Dkt. 117 at ¶6; Dkt. 118 at ¶7. He lacks authority to enforce criminal laws. *Id.*

22 *4. Current lease status of the Allotment.*

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1 According to counsel to Plaintiffs, the Allotment is the subject of a lease currently under
2 negotiation, with proposed lease terms to include revenue from the billboard. Dkt. 121 at ¶10, pp.
3 9-12. Counsel has included several redacted pages of the proposed lease that he represents are
4 “the only pages directly relevant to this case,” including a page that purportedly allows the
5 Lessee to enter into subleases for the billboard “without meeting consent requirements or
6 obtaining BIA approval[.]” *Id.* at ¶10 and pp. 8-12. *But see* Dkt. 116-1 (Dec. 9, 2006 BIA letter
7 to contractor regarding Environmental Assessment for “partially constructed outdoor display”).

8 The legal character of the Allotment is disputed by the parties but not addressed by this
9 Order.

10 **B. CLAIM AGAINST DEFENDANT BELIN.**

11 Of five claims in the Fourth Amended Complaint, only the First Claim pertains to Belin.
12 *Compare* Dkt. 79 at ¶22; *id.* at ¶¶ 23-37. The First Claim seeks injunctive relief on two grounds:
13 (1) a permanent injunction, for Defendant Belin “to withdraw all orders issued by them stopping
14 construction of the existing billboard sign in the process of construction,” and (2) an order
15 “prohibiting all interference by the City of Puyallup preventing Plaintiffs from installing,
16 completing and maintaining the sign on the premises.” *Id. See id.* at p. 21. The First Claim also
17 seeks declaratory relief, for a “ruling that Puyallup law enforcement officers are required to
18 respond to calls from property owners to investigate . . . crime on the Allotment.” *Id.*

19 The First Claim provides the following factual background to the alleged constitutional
20 deprivations by Defendant Belin and two other defendants previously dismissed from the case:

21 In 2006, Edward Amos Comenout Sr., then an owner of over a 50% joint interest in the
22 Allotment, started construction of a large commercial billboard . . . On October 26, 2006,
23 the City of Puyallup issued a stop-work order on the land. City of Puyallup employees . .
24 . trespassed on the land to attach stop-work orders [*sic*] on the construction. They refused
to recognize the federal jurisdiction of the Allotment. *Id.*

1 *Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
2 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

3 The determination of the existence of a material fact is often a close question. The Court
4 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
5 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
6 *Service Inc.*, 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor
7 of the nonmoving party only when the facts specifically attested by that party contradict facts
8 specifically attested by the moving party. The nonmoving party may not merely state that it will
9 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
10 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson*, *supra*).

11 Conclusory, non-specific statements in affidavits are not sufficient, and “missing facts” will not
12 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

13 **B. ISSUES ANALYSIS.**

14 *1. Whether Defendant Belin has authority to enforce the stop work order.*

15 Plaintiffs seek injunctive relief that would “withdraw” all orders prohibiting billboard
16 construction and would “prohibit all interference” in their billboard activities on the Allotment.
17 Dkt. 79 at ¶22 and p. 21. Plaintiffs have named Defendant Belin in requesting this relief, which
18 presumes that Defendant Belin has civil enforcement authority for the City of Puyallup. There is
19 no showing that Defendant Belin has this authority.

20 The record points only to the contrary. There is no issue of material fact as to whether
21 Defendant Belin *currently* possesses authority to act on behalf of the City of Puyallup to enforce
22 its municipal building codes. Under Puyallup Municipal Code, civil enforcement authority of
23 building codes is extended to only to “enforcement officers,” defined as “the city’s code
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1 enforcement officer or any person authorized by the director of any department[.]” Puyallup
2 Municipal Code 1.02.020; 17.04.130. There is no dispute that Defendant Belin, a Senior Plans
3 Examiner, is not a code enforcement officer. When Defendant Belin visited the Allotment in
4 2006, he was accompanied by another person with the job title of code enforcement officer, Ms.
5 Keirse. Dkt. 116-1 at 60.

6 Even if Defendant Belin had authority to enforce the City’s building code in 2006, there
7 is no indication that Defendant Belin, in his current role of Senior Plans Examiner, is a “director
8 of a department” or a person delegated that authority by a department director. Defendant Belin
9 disavows possessing such authority, and his job description makes no mention of enforcement.
10 Dkt. 118 at ¶¶ 5, 6; Dkt. 123-1. The October 27, 2006 letter from the City Attorney, the Notice of
11 Violation and Stop Work Order, explicitly invokes enforcement authority of “the City’s Building
12 Official.” Dkt. 116-1 at 64. If it is assumed that the City’s Building Official is a department
13 director, Defendant Belin does not hold, and has not ever held, that position. *Id.* Even if the
14 record could be construed to indicate that Defendant Belin reported to the City’s Building
15 Official prior to 2008, no evidence suggests that the City’s Building Official has delegated
16 enforcement authority to Defendant Belin at present.

17 The record is void of any indication that a department director delegated enforcement
18 authority to Defendant Belin. Plaintiffs have not sought to add a defendant other than Defendant
19 Belin, and Plaintiffs did not request to conduct additional discovery on Defendant Belin.

20 In sum, by statute or ordinance, the authority to enforce municipal building codes is
21 extended only to code enforcement officers and department directors or their designees. There is
22 no showing that Defendant Belin is, or has ever been, a code enforcement officer. He is not the
23 director of a department, and nothing points to current delegation of authority by a department
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1 director, including the City's Building Official. Even if the Court were to grant the injunctive
2 relief requested, Defendant Belin is not the appropriate subject of the relief. He should be
3 dismissed.

4 Plaintiffs make much of Defendant Belin's role in the issuance of the stop work order in
5 2006. Dkt. 119 at 1, 2. Although Defendant Belin's role in issuance of the City's enforcement
6 action may be a disputed fact, even if Defendant Belin himself had issued the stop work order in
7 2006, Plaintiffs seek injunctive relief, not damages. To obtain injunctive relief, Defendant Belin
8 needs to be the appropriate subject of the requested action, which, as discussed, he is not.

9 Plaintiffs also argue that granting summary judgment in favor of Defendant Belin "would
10 hold that he, or his replacement, would have jurisdiction of the allotment to inspect constructions
11 . . . set[ting] in motion another stop order entered without jurisdiction." *Id.* at 2. This Order
12 makes no finding about the legal status of the Allotment, and dismissal of Defendant Belin
13 should not be construed as a finding, in favor of or against, the enforceability of the City of
14 Puyallup's building code. The issue presented is whether Plaintiffs can sustain a claim against
15 Defendant Belin, which they cannot.

16 The requests for injunctive relief in the First Claim should be dismissed as to Defendant
17 Belin.

18 2. *Whether Defendant Belin has authority to act as City of Puyallup law enforcement*
19 *officer.*

20 It is unclear why the request for declaratory relief, for the City of Puyallup to be required
21 to respond to emergency calls from the Allotment, was included in the same paragraph as the
22 requests for injunctive relief. There is no evidence that Defendant Belin has ever been a law
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1 enforcement officer. The evidence, including declarations by Defendant Belin and of the Chief
2 of Police for the City of Puyallup, points exclusively to the contrary. *See* Dkts. 117, 118.

3 The request for declaratory relief in the First Claim should be dismissed as to Defendant
4 Belin. Because there remains no other relief requested as to Defendant Belin, in the First Claim
5 or elsewhere, Defendant Belin should be dismissed from the case.

6 3. *Other grounds for dismissal raised by Defendant Belin.*

7 Because summary judgment of dismissal should be granted on the merits as to Defendant
8 Belin, the Court respectfully declines to reach Defendant Belin's alternative grounds for
9 dismissal: standing, failure to join necessary parties, and bar by the statute of limitations.

10 **III. ORDER**

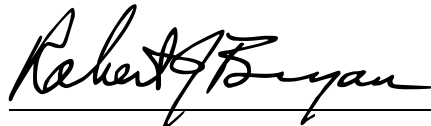
11 Therefore, it is hereby **ORDERED** that:

12 Defendant Eric Belin's Motion for Summary Judgment (Dkt. 115) is HEREBY
13 GRANTED. Defendant Belin is HEREBY DISMISSED from the case.

14 IT IS SO ORDERED.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
16 to any party appearing pro se at said party's last known address.

17 Dated this 11th day of May, 2018.

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20 ROBERT J. BRYAN
21 United States District Judge
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